

## REMARKS

This amendment is in response to the Office Action of July 12, 2005 in the above-identified continued examination application. Claims 1-32 and 36, 37 41, 43, 47-49, 51, 62, 63 and 66-69 were previously canceled.

The Alpert reference

The Examiner has taken the position that applicant's parent USP 5,518,399 teaches using a fiberglass composite only with respect to the embodiment of Figs. 1-3 and not the embodiment including fiber bundles as claimed in the present application.

Independent claims 33 and 55 as amended calls for post comprising a "bundle of non-metallic and non-woven fiberglass fibers in a cured resin, forming a reinforced plastic composite,". This language is supported in applicant's parent application (USP 5,518,399), as well as the instant application. Applicants' parent application does disclose the use of fiberglass composites, such as fiberglass polyester composites (see col. 5, lines 52-57 of the patent) to make the endodontic dental posts of the invention. Applicants traverse with the Examiner's argument that the parent application only teaches the use of fiberglass composite with respect to the embodiment of Figures 1-3. The specification describes a "core spacer" and a "post reinforcing rod" "preferably formed from reinforced plastics such as fiberglass polyester composites". Even though this statement is made while describing the post of Figure 3, the statement is not limited to the embodiment of Figure 3. It is clear that the statement is of general applicability because

throughout the specification, Applicants use the words "post reinforcing rod" to refer to the dental posts of the invention.

For example, the specification states at column 7, lines 35-37 with respect to Figure 8 that: "(m)utable post 100 and mutable post reinforcing rod 130 are preferably formed from a bundle of reinforced plastic or other fibers cemented together at the central portion 101b and the lower portion 101c of fibers 101".

Having disclosed at least once that such posts can be made of fiberglass composites, the Applicants did not have to repeat this statement for each of the various post reinforcing rods that are disclosed in the application. Based on the specification, a person skilled in the art would have understood that each of the various reinforcing rods could have been made of fiberglass composites or other reinforced plastic composites.

As to Figure 9, the specification states at column 7, lines 48-49 that the post may be flared or unflared.

Therefore, anyone reading the specification would realize that the posts of Figures 8 and 9 would also be made of fiberglass fibers, like those of Figures 1-3.

Independent claims 77 and 78 recite similar language to that in independent Claim 55.

Thus, all the independent claims are drawn to subject matter which clearly predates the Alpert patent which should be removed as a reference. Applicants' prior parent patent number 5,518,399, was filed September 21, 1993, clearly before Alpert's filing date of August 17, 1994.

#### The Section 102(b) Rejection

Claims 33, 34, 50, 52-58, and 77 were rejected as being anticipated by Weissman 5,326,263.

Weissman discloses a post to be inserted into the root canal of a tooth. The post is a solid member made out of "light transmitting physiologically inert material", such as plastic (as opposed to a bundle of fibers) which is shaped to a profile matching that of the "reamed out bottom of the canal" (col. 6, lines 19-23). Weissman does not disclose a dental post made of a bundle of fiberglass fibers. Weissman states that its post may comprise a single thin rod of optical glass in a central channel of the post. In contrast, in the present invention, the post is a prefabricated bundle of fibers cemented together (see column 7, lines 35-40). All independent claims 33, 55, 77 and 78 have been amended to recite bundles of fibers, clearly distinguishing these claims and their depending claims over this reference.

#### The Sec. 103 Rejections

Claims 33, 35, 38, 40, 42 44-46, 50, 53-61, 64, 65, 70, 71, 74-76, 78-82, 84, 85, 88, 89, 91 and 92 were rejected as being unpatentable over Reynaud in view of Albert (presumably Alpert).

Alpert has a rope-like flexible root canal prosthesis using glass fibers among other possible fibers with a "stiffening agent" (col. 3, lines 60-64) such as a polymerizable resin. The reference was cited for the use of glass and plastic fibers. As discussed above, Alpert is not prior art to the instant application. For this reason alone, the Examiner's obviousness rejection over Reynaud in view of Alpert cannot stand.

Reynaud discloses a peg of extruded epoxy resin around a wick of continuous fibers of carbon. The peg is machined to have the shaped illustrated in Fig. 1, that is, forming shanks 6 and 8 separated by a truncated section 7. In the present invention, the fibers are fiberglass, not carbon, and the various depending claims recite additional features not found or suggested in

Reynaud such as non-axially aligned fiber, glass fibers, the post being translucent, etc.

Independent claim 33 has been amended to recite a "bundle of non-metallic and non-woven fiberglass fibers in a cured resin, forming a reinforced plastic composite". This construction is not found or suggested in Reynaud.

Independent claims 55, 77 and 78 have been amended to call for a bundle of fiberglass fibers in a cured resin or a fiberglass reinforced composite which clearly distinguishes these claims over Reynaud which employs carbon fibers.

Claims 34 and 90 were rejected as being unpatentable over Reynaud in view of Alpert and further in view of Kwiatkowski. The latter reference was cited for the use of a translucent post. With the removal of Alpert as a reference it is not seen how the post of Reynaud using carbon fibers can be made translucent.

Claim 39 was rejected as being unpatentable over Reynaud in view of Alpert and further in view of Al Kasem which was cited for the use of an opaque filler. This claim should be allowed along with its parent claim 33 and intervening claim 38.

Claim 52 was rejected as being unpatentable over Reynaud in view of Alpert and further in view of Weissman which was cited for the shaped end to direct light. This would be allowable along with its parent claim 33.

Claims 72 and 73 were rejected as being unpatentable over Reynaud in view of Alpert and further in view of Fujisawa which was cited for the use of radio opaque material. These claims would be allowable along with their parent claim 33 and intervening dependent claims.

Claims 83, 86, and 87 were rejected as being unpatentable over Reynaud in view of Alpert and further in view of Fujisawa which was cited for the use of radio opaque material. These

claims would be allowable along with their common parent claim and any intervening claims.

The Examiner has taken the position that "the term prefabricated is merely defining a method of use and/or a method of the time at which a process of making step is performed, and therefore, is met by the shown structure of the prior art". Applicant respectfully disagrees with the Examiner on this. When a dental reinforcement post is assembled in situ, it is not a stand alone element because it intimately is formed as part of the tooth. That is, it cannot be thought of as a separate entity. When an object is prefabricated, however, it is a stand alone member, which is what is being claimed in this application. Therefore, the use of the term "prefabricated" in a claim (in this art) is not something that can be read on a dental post formed in situ. It is thus believed that weight in the claims should be given to this expression.

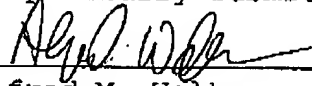
For the reasons given above, it is believed that all of the claims in their present form are drawn to patentable subject matter and should be allowed.

The Examiner is requested to call the undersigned if additional changes are required to obtain allowance.

A favorable action is solicited.

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Respectfully submitted,

  
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**CERTIFICATE OF FAX TRANSMISSION**

I hereby certify that this correspondence is being deposited by Fax to Commissioner for Patents at 571-273-8300 on the date indicated below.

Date: November 14, 2005

  
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